

**REMARKS**

Claims 1-33 are pending in the present Application. Claims 1 and 17 have been amended. Support for amended Claims 1 and 17 can be found at, for example, page 5, lines 2-4, page 7, lines 4-8 and the paragraph bridging pages 7 and 8. Claims 27, 29 and 31 have been amended to be consistent with amended Claim 17. No new matter has been added. Accordingly, entry of the present Amendment is respectfully requested.

**Response to Rejection under § 112**

Claims 1-33 have been rejected under 35 U.S.C. § 112, first paragraph, as assertedly failing to comply with the written description requirement.

Without admitting that this rejection is correct (the Examiner admits that the term “nonpositive manner” is present in the specification, Claims 1 and 17 have been amended to cancel the phrase “non-positive manner.” Accordingly, withdrawal of the rejection is respectfully requested.

**Response to Rejection Under § 102**

I. Claims 1-3, 7, 8, 10, 11, 16, 17-19, 22-24, 26, 30 and 31 have been rejected under 35 U.S.C. § 102(b) as assertedly being anticipated by U.S. Patent No. 5,405,675 to Sawka et al.

Applicants respectfully traverse this rejection for the following reasons.

The present claims relate to a floor covering of a multilayer plastic web or sheet having a three-dimensional optical appearance, comprising a base layer that is surface embossed on one side and a transparent cover layer based on PVC, having a smooth surface facing away from the embossed base layer and arranged on the embossed surface of the base layer such that the embossed structure is transferred from the base layer in the underside of the cover layer.

Sawka discloses, at col. 3, lines 1-20 and col. 6, lines 32-68 and col. 7, lines 1-45, protective surface layers which are polyurethane-based or poly(vinylidene fluoride)- and poly(methylacrylate)-based. However, Sawka fails to disclose or suggest a transparent cover layer based on PVC. In fact, Sawka discloses at col. 2, lines 27-35, that the aim of Sawka is to avoid PVC as much as possible. Thus, Sawka fails to anticipate or render obvious the present claimed invention. Accordingly, withdrawal of the rejection is respectfully requested.

II. Claims 1-11 and 14-33 have been rejected under 35 U.S.C. § 102(b) as assertedly being anticipated by either U.S. Patent No. 4,409,280 to Wiley et al. or U.S. Patent No. 5,773,127 to Martin et al.

Applicants also respectfully traverse these rejections.

Wiley and Martin both relate to a chemical embossing technique, wherein the structuring, i.e., embossing, is achieved by foaming a respective layer while, in specified areas, forced foaming is retarded. Accordingly, any structuring, i.e., embossing, resulting therefrom will be present in every layer which is provided on the foaming layer. Thus, as can be clearly seen in the figures of Wiley and Martin, a respective cover layer will always be structured, i.e., embossed, and therefore will never be smooth.

In contrast, according to the present invention, the transparent cover layer has a smooth surface facing away from the embossed base layer. Moreover, given that the methods according to the present invention and that of Wiley and Martin are different, the present invention would not have been obvious to one of ordinary skill in art having knowledge of Wiley and Martin. In particular, there is no teaching, suggestion or appreciation in the cited references of the surprising and advantageous effects described in the present application.

In this regard, according to the present claimed invention, one of the unexpected and advantageous effects is that the floor covering has a three-dimensional appearance, but a smooth cover layer. In other words, although the floor covering of the present claimed invention has a three-dimensional appearance, it is not subject to soiling due to dirt sticking in respective structures on the cover layer, and is easy to clean. Further, the presently claimed floor covering maintains high optical quality and appearance. Thus, Wiley and Martin fail to anticipate or render obvious the present claims. Accordingly, withdrawal of the rejection is respectfully requested.

**Response to Rejection Under § 103**

Claims 12 and 13 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Wiley, Sawka or Martin.

It is asserted in connection with this rejection that “the primary reference teaches the invention substantially as recited except for the specific profile dimensions of the embossments per claims 12 and 13.”

However, for the reasons discussed above, Applicants submit that the cited references do not teach or suggest the claimed invention. Namely, the cited references do not teach or suggest a floor covering as presently claimed in amended Claim 1 from which Claims 12 and 13 depend.

Applicants also respectfully traverse this rejection.

Accordingly, withdrawal of the rejection is respectfully requested.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

This Amendment is being filed via the USPTO Electronic Filing System (EFS). Applicant herewith petitions the Director of the USPTO to extend the time for reply to the above-identified Office Action for an appropriate length of time if necessary. Any fee due under 37 U.S.C. § 1.17(a) is being paid via the USPTO Electronic Filing System (EFS). The USPTO is also directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880.

Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Thomas M. Hunter  
Registration No. 64,676

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

Date: July 16, 2009